

HOUSE No. 4779

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, March 22, 2006.

The committee on Labor and Workforce Development, to whom was referred the petition (accompanied by bill, House, No. 1603) of Robert P. Spellane relative to encouraging competition with respect to workers' compensation insurance rates, reports recommending that the accompanying bill (House, No. 4779) ought to pass.

For the committee,

MICHAEL J. RODRIGUES.

The Commonwealth of Massachusetts

In the Year Two Thousand and Six.

AN ACT RELATIVE TO THE COMPETITIVE DETERMINATION OF WORKERS'
COMPENSATION INSURANCE RATES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 53A of Chapter 152 of the General Laws, as
2 appearing in the 2004 Official Edition, is hereby amended by insert-
3 ing the following language immediately preceding subsection (1):—

4 Section 53A. For the purposes of this section, the following
5 words shall have the following meanings:

6 “Loss cost modifier (‘LCM’)” shall mean that provision within
7 the rates proposed or approved for any insurer or Pool writing
8 workers’ compensation and employers’ liability insurance,
9 intended to account for such company’s or Pool’s (i) projected
10 expenses, other than allocated loss adjustment expense; (ii) profit
11 and contingency allowance; and (iii) expected difference in loss
12 experience and/or allocated loss adjustment expense from that of
13 the loss and allocated loss adjustment experience of the industry
14 as a whole. Except for any expense constant component, LCMs
15 shall be expressed as decimals to be applied equally and uni-
16 formly to the prospective loss costs approved by the Commis-
17 sioner for use by the filer across all hazard and industry groups.
18 The LCM shall not include any provision to account for assess-
19 ments collected on behalf of the residual market or to support any
20 trust funds created pursuant to section sixty-five.

21 “Pool” shall mean the reinsurance pool established pursuant to
22 section sixty-five C.

23 “Prospective loss cost” shall mean that portion of a workers’
24 compensation and employers’ liability rate that does not include
25 provisions for expenses (other than allocated loss adjustment
26 expenses), profit and contingency, or variations in company loss
27 and allocated loss adjustment expense experience as compared
28 with the experience of the industry as a whole. Such loss costs

29 shall be based on historical aggregate losses and allocated loss
30 adjustment expenses, both reasonably adjusted through develop-
31 ment to their ultimate value and projected through trending to a
32 future point in time.

33 “Rate” shall mean the cost of workers’ compensation and
34 employers’ liability insurance per exposure unit, which shall be
35 derived from a prospective loss cost for such exposure adjusted by
36 a filed LCM.

1 SECTION 2. Section 53A of Chapter 152 is hereby further
2 amended by striking out subsection (1), and inserting in place
3 thereof the following:—

4 (1) Any insurance company authorized to transact business in
5 this commonwealth under subclauses (b) and (e) of clause Sixth of
6 section forty-seven of chapter one hundred and seventy-five may,
7 except as provided in clause (c) of section fifty-four of said
8 chapter one hundred and seventy-five, insure the payment of the
9 compensation provided for by this chapter, and when any such
10 company insures such payment, it shall file with the commissioner
11 of insurance, or, if it is a member of or subscriber to a rating orga-
12 nization under section fifty-two C, authorize such rating organiza-
13 tion to file with the commissioner on its behalf, its classification
14 of risks and projected loss costs relating thereto.

1 SECTION 3. Section 53A of Chapter 152 is hereby further
2 amended by striking out subsection (2), and inserting in place
3 thereof the following:—

4 (2) The commissioner shall designate a rating organization,
5 duly qualified under section fifty-two C, to file with the Commis-
6 sioner proposed loss costs and classifications of risks associated
7 with writing workers’ compensation and employers’ liability
8 insurance in the commonwealth, for use in both the voluntary
9 market and the Pool. Said rating organization shall annually file,
10 on or before November 1 of the year such filing is made, industry-
11 wide classifications of risks, prospective loss costs, and minimum
12 premium determination rules for use throughout the entire market.
13 Prospective loss costs and classifications of risk shall be devel-
14 oped for the entire insured workers’ compensation market uti-
15 lizing loss experience without regard to whether such experience

16 came from the voluntary market or the Pool. In any instance in
17 which the most recent aggregated three years of calendar/acci-
18 dent-year data of the loss-plus-all-expense ratios of the top fifteen
19 insurers in voluntary and Pool market share-with all the compa-
20 nies smaller than the fifteenth largest combined to make the fif-
21 teenth “company” in such list-contain any companies whose
22 loss-plus-all expense ratios exceed 150% of the median combined
23 ratio of such companies, the Commissioner shall, when consid-
24 ering the appropriateness of filed loss costs at the next prospective
25 loss cost proceeding, exclude the voluntary and residual market
26 premiums, payrolls, losses and allocated loss adjustment expenses
27 of such high-ratio companies.

28 The designated rating organization shall also file all necessary
29 parameters, rating and statistical reporting rules, and forms to be
30 used by any company wishing to write retrospectively rated or
31 large deductible policies. The designated rating organization may
32 also file any desired changes to existing rating plans and other
33 adjustments requested to be applied to the rates and classifications
34 within the voluntary market or Pool. Prospective loss costs and
35 any additional requests made within prospective loss cost filings
36 shall be approved by the commissioner only if it is determined
37 after a hearing that their use will not, given reasonable LCMs,
38 produce premiums that are inadequate, excessive, or unfairly dis-
39 criminatory.

40 Non-rating organization members making individual company
41 prospective loss cost filings must utilize only such classifications
42 of risk and rating plans as are consistent with those filed by the
43 designated rating organization as set forth herein and approved by
44 the commissioner.

45 Within thirty days after the prospective loss cost filing under
46 this Section the commissioner shall initiate a hearing to ensure
47 that (i) the proposed classifications are reasonable and equitable,
48 and (ii) the proposed loss costs fall within a range of reasonable-
49 ness and are not excessive, inadequate, or unfairly discriminatory
50 for the risks to which they apply.

51 Any hearing on projected industry loss costs shall be completed
52 within forty-five days of its commencement and a written decision
53 thereon shall be issued within thirty days of the close of such
54 hearing. If, after said hearing, the commissioner disapproves any

55 part of the filing, the reasons for such disapproval shall be speci-
56 fied in the decision which shall also indicate what changes would
57 be necessary to make any refiling approvable. Any projected loss
58 cost filing shall be deemed approved if the commissioner does not
59 commence the hearing within thirty days of receipt of the filing,
60 complete the hearing within forty-five days of its commencement,
61 or issue a written decision within thirty days of its completion.
62 The rating organization, non-member company that has made an
63 individual prospective loss cost filing, or other aggrieved party to
64 a proceeding may seek review of the commissioner's decision
65 before the Supreme Judicial Court.

1 SECTION 4. Section 53A of Chapter 152 is hereby further
2 amended by striking out subsection (4), and inserting in place
3 thereof the following:—

4 (4)(a) Simultaneous with its annual filing of prospective industry-
5 wide loss costs, the rating organization designated by the commis-
6 sioner to administer the Pool pursuant to section sixty-five C shall
7 separately file LCMs to be used in the Pool as of the effective date
8 of such new loss costs. Such LCMs shall be approved as adequate,
9 not-excessive and not unfairly discriminatory if and only if they
10 reflect the following factors:

- 11 (i) A loss-and allocated loss-adjustment expense multiplier of 1.0;
- 12 (ii) A multiplier reflecting a reasonable estimate of the general
13 and unallocated loss adjustment expenses in the overall workers'
14 compensation market;
- 15 (iii) Any appropriate loss and expense constants;
- 16 (iv) A reasonable profit-and-contingency multiplier; and
- 17 (v) Such tables and parameters as are necessary for member
18 companies to write retrospectively rated or deductible policies.

19 In reviewing the appropriateness of the rating organization's
20 filed multipliers for expense and for profit-and-contingency, the
21 commissioner shall be guided by a review of the most recent com-
22 pany LCM filings and shall endeavor to place such Pool compo-
23 nents within the voluntary market range; provided, however, that
24 the Pool profit-and-contingency component shall reflect any data
25 that indicates that the risk of covering randomly assigned expo-
26 sures may be slightly higher than that of covering similar risks
27 freely chosen by an insurer, and provided further that the compo-

28 nents shall reflect any changes in the economic and company
29 expense environments since the voluntary market LCMs reviewed
30 were last placed on file. It shall be prima facie evidence of the
31 reasonability of a Pool profit and contingency multiplier that such
32 multiplier falls within the range prescribed below for individual
33 company filings of such multipliers. Each industry-wide loss cost
34 filing and Pool LCM filing shall, if not disapproved, be effective
35 as of July 1 of the year following completion of the hearing on
36 prospective loss costs. Decisions disapproving Pool LCMs shall
37 indicate what changes are deemed necessary to make such LCMs
38 acceptable to the Division.

39 (b) Except as provided below with respect to filings already on
40 file and that continue to be in compliance with this section, each
41 company that is a member of the bureau duly designated by the
42 commissioner to make such filings shall, subsequent to the annual
43 approval of an industry-wide prospective loss cost filing and the
44 placing on file of a Pool LCM, submit to the division of insurance
45 an LCM filing upon which it desires its rates to be based. Indi-
46 vidual companies not belonging to said rating bureau must also
47 make separate filings of their LCMs subsequent to approval of
48 their estimate of prospective company loss costs. In making indi-
49 vidual company loss cost and LCM filings, due consideration
50 shall be given by an insurer to its past and prospective loss and
51 allocated loss adjustment expense experience within and outside
52 this commonwealth, to catastrophe hazards, if any, to a reasonable
53 margin for underwriting profit and contingencies, to past and
54 prospective expense both countrywide and those specially applic-
55 able to this commonwealth, and to all other relevant factors within
56 and outside this commonwealth, including the experience or judg-
57 ment of the insurer.

58 In addition to its final proposed modifier, each insurer's LCM
59 filing shall set forth the following constituent components of such
60 modifier:

61 (i) A multiplier which shall reflect the filer's estimate of its loss
62 and allocated loss adjustment expense. Each such multiplier shall
63 be at least .75, but no greater than 1.25 of the industry loss and
64 allocated loss adjustment expense costs approved by the Commis-
65 sioner. The Commissioner may approve a filing that includes dif-
66 ferent multipliers for different industrial classes under this paragraph

67 but only if such differential multipliers are actuarially supported
68 by the filer and are not violative of subsection (5).

69 (ii) A multiplier reflecting the filer's estimate of its general and
70 unallocated loss adjustment expense costs. Such multiplier shall
71 not be lower than 0.33 or higher than 0.50 of the industry loss and
72 allocated loss adjustment expense costs approved by the Commis-
73 sioner.

74 (iii) A multiplier of the industry loss and allocated loss adjust-
75 ment expense costs approved by the Commissioner reflecting the
76 filer's estimate of its profit and contingency requirements. Such
77 multiplier shall be no less than the result of subtracting 1.0 from
78 the average of 1.0 and the workers' compensation discount factor
79 applicable to the earliest tax year shown for countrywide flows on
80 the most recent IRS publication regarding discount factors for
81 unpaid losses under Section 846 or any corresponding successor
82 section of the Internal Revenue Code, and shall be no greater than
83 seven hundred basis points (0.07) higher than said result.

84 (iv) Any expense or loss constants the filer proposes to charge;
85 provided, however, that no such constants shall exceed those cur-
86 rently approved for use in the Pool at the time of the company
87 LCM filing.

88 The factor to be multiplied by the approved loss and ALAE
89 cost by class shall be the sum of the multipliers described above
90 in (i), (ii), and (iii). The final company modifier shall also include
91 any constants described in (iv).

92 (c) Both the Pool and individual company insurers' final rates
93 shall be determined by applying filed loss cost modifiers to the
94 most recently approved loss and ALAE costs for the industry as a
95 whole. Rating plans for retrospectively rated or deductible poli-
96 cies written by an insurer shall be consistent with and derivable
97 from parameters approved in the industry-wide loss cost filing.
98 Companies shall use the rates, rules or amounts approved for the
99 Pool for minimum premium determinations and for per capita and
100 other non-payroll-based class rates. The classification and experi-
101 ence rating systems approved for the industry as a whole in accor-
102 dance with this section shall be adopted by every insurer without
103 modification.

104 Except where company solvency or continuation is an issue
105 or where there has been a law change affecting company costs,

106 individual company LCM filings shall be effective no earlier than
107 thirty days following their receipt by the division of insurance;
108 provided, however, that no Pool or individual company filed LCM
109 shall become effective if, within twenty-one days of its receipt by
110 the Division, the state rating bureau asserts in writing to the filing
111 company or bureau and the commissioner of insurance that there
112 is one or more defects in the form or manner of any such filing,
113 explaining the nature of such alleged defects and recommending
114 an acceptable manner of their removal. In such instances the com-
115 pany or Pool may not use its filed LCM and may either revise its
116 filing in the manner recommended by the state rating bureau or
117 request a hearing to review the prohibition of its use. The state
118 rating bureau shall disapprove an individual company's LCMs as
119 defective only for the following reasons: (i) such filing contains
120 one or more LCM components that are violative of this section;
121 (ii) such filing would tend to impair or threaten the solvency of
122 the filer; (iii) such filing would likely create a monopoly in the
123 market; or (iv) such filing is expected to produce one or more
124 rates, classifications or premiums that are in any respect unfairly
125 discriminatory. If the company or the Pool chooses to revise the
126 filing based on the state rating bureau's objections, the earliest
127 date upon which the filing may be used, if no earlier date is
128 agreed upon by the company and the division, shall be sixty-five
129 days from the division's receipt of the original filing. The com-
130 missioner shall commence any hearing pursuant to this subsection
131 within twenty-one days of division receipt of the filer's request
132 for a review of the state rating bureau's written reasons for disap-
133 proval of the filing. In the case of an individual company filing,
134 the commissioner shall, by written decision, disapprove the filed
135 LCM after the hearing if and only if she finds contains one or
136 more of the substantive or formal failures set forth in the disap-
137 proval by the state rating bureau. Decisions on LCM hearings
138 shall be issued no later than twenty-one days following com-
139 mencement of such hearings. In any instance in which either the
140 hearing is not commenced within twenty-one days of receipt of
141 the filer's request or the decision is not issued within twenty-one
142 days of the hearing's commencement the LCM filing shall be
143 deemed approved and become effective no sooner than sixty-five
144 days from the division's receipt of the company's request for a

145 hearing or the effective date proposed by such company, which-
146 ever is the later date.

147 Whenever the commissioner disapproves an individual com-
148 pany LCM filing in accordance with this section, she may, in her
149 sole discretion, authorize the insurer to use either that LCM in
150 effect for such entity prior to the disapproved filing or that LCM
151 most recently placed on file for the Pool. Effective LCMs,
152 whether placed on file by the division as submitted or authorized
153 for use by the commissioner pursuant to a hearing as set forth
154 above shall remain in effect at least until July 1 of the following
155 year. Companies need not refile and may continue to use any
156 effective LCMs subsequent to approved changes in prospective
157 loss costs when all the components of such LCMs continue to
158 comply with every provision of this section; provided, however,
159 that the commissioner may at any time after any company's LCM
160 has been in effect for a year, require such company to file a new
161 LCM, indicating what changes are deemed to be required to make
162 such LCM comply with this section.

163 Both the Pool and individual insurers shall have the right to
164 appeal any decision of the commissioner of insurance regarding
165 LCMs pursuant to section fourteen of chapter thirty A, except that
166 all such appeals shall be filed with the supreme judicial court.

167

168 SECTION 5. Section 53A of Chapter 152 is hereby further
169 amended by striking out subsection (5), and inserting in place
170 thereof the following:—

171 (5) Insurers' LCM filings shall be in such form and manner as
172 will enable the commissioner of insurance to ensure that all filed
173 LCM components are within the constraints provided by section
174 four and to determine both the filer's basis for its proposed LCM
175 and the premiums such insurer would charge its insureds if such
176 filing were to be approved. When any filing is not accompanied
177 by the information upon which the insurer supports such filing, or
178 the commissioner does not have sufficient information to deter-
179 mine whether such filing meets the requirements of this section,
180 she may require the filer to furnish the information upon which it
181 supports such filing.

182 Each company group having more than one company writing
183 workers' compensation insurance within the commonwealth shall

184 make a single filing containing all the LCMs such group proposes
185 to employ within its entire group, and its filing shall provide
186 objective and not unlawfully discriminatory criteria for placing
187 risks in particular companies within such group. For purposes of
188 this section, a company group's LCMs shall be considered
189 unfairly discriminatory if either (i) they include one or more LCM
190 that is deemed to violate any anti-discrimination statute; (ii) they
191 include one or more LCM that could produce rates that are not
192 uniform within any classification of risk written within any com-
193 pany; or (iii) they could produce disparate rates within the same
194 industrial classification as between two or more companies within
195 the same company group, and such differences are not entirely a
196 function of objective and not unlawfully discriminatory criteria
197 filed along with such group's LCMs. Nothing in this paragraph
198 shall be construed to prohibit companies from utilizing policy-
199 holder dividend plans that return diverse dividends within any
200 class at the close of a policy period based on company or indi-
201 vidual risk performance; provided, however, that no specified div-
202 idend amounts may be promised or paid to policyholders in
203 advance of annual declarations.

204 The commissioner may promulgate rules or regulations as
205 deemed necessary to carry out the provisions of this section.

1 SECTION 6. Section 53A of Chapter 152 is hereby further
2 amended by striking out subsection (6), and inserting in place
3 thereof the following:—

4 (6) Where a claim against an insured that has affected such
5 insured's experience rating has been found non-compensable, or
6 where an insurer recovers previously paid workers' compensation
7 benefits from a negligent third party, or where an insurer has been
8 reimbursed by the insured or the Workers' Compensation Trust
9 Fund for payments made pursuant to subsection two of section
10 sixty-five, the insurer shall submit a revised statistical unit report
11 to the appropriate rating bureau within sixty days of such finding,
12 recovery or reimbursement.

1 SECTION 7. Section 53A of Chapter 152 is hereby further
2 amended by striking out subsection (7), and inserting in place
3 thereof the following:—

4 (7) The commissioner of insurance shall, by the use of experi-
5 ence rating credits, the institution of a payroll cap on premium
6 computation, or other method, provide for equitable distribution
7 of premiums among employers paying higher than average wages
8 and those paying lower than average wages.

1 SECTION 8. Section 53A of Chapter 152 is hereby further
2 amended by striking out subsection (8), and inserting in place
3 thereof the following:—

4 (8) The advisory council established pursuant to section fifteen
5 of chapter twenty-three E may request loss data from any insur-
6 ance company or rating organization. Any insurance company or
7 rating organization that is the recipient of such a request may, if it
8 believes that the request is unduly burdensome or unreasonable,
9 file a motion to be heard by the commissioner of insurance con-
10 cerning whether all or part of the request requires response. The
11 commissioner of insurance may, if the commissioner finds the
12 request is unduly burdensome or unreasonable, deny the request in
13 whole or in part.

14 At any prospective loss cost or Pool LCM hearing conducted
15 pursuant to this section, the advisory council may present a
16 written statement and oral testimony relating to any issues that
17 may arise during the course of such hearing. Said advisory council
18 may not cross-examine witnesses produced by other parties or
19 appeal any decision of the commissioner.

1 SECTION 9. Section 53A of Chapter 152 is hereby further
2 amended by striking out subsections (9), (10), (11), (12), (13),
3 (14), (15), (16) and (17) and inserting in place thereof the
4 following:—

5 (9)(a) The commissioner shall make a finding on the basis of
6 information submitted in any prospective loss cost filing made
7 pursuant to this section that the insurer or insurers employ cost
8 control programs and techniques acceptable to the commissioner
9 which have had or are expected to have a substantial impact on
10 fraudulent claim costs, unnecessary health care costs, and any
11 other unreasonable loss costs, as well as on the efficient and ade-
12 quate collection of the appropriate premium charges owed
13 the insurer or insurers. If the commissioner does not so find, the

14 commissioner may disapprove such filing. The commissioner
15 shall also have authority to make findings, after a hearing on any
16 prospective loss cost filing made pursuant to this section, that the
17 proposed loss costs are excessive due to the failure of the insurer
18 or insurers to utilize adequate programs to control loss costs or to
19 collect the appropriate premium charges. If the commissioner so
20 finds, she shall disapprove such a filing or, in the alternative, shall
21 limit in any manner determined to be appropriate the amount of
22 any adjustment in premium charges based upon changes in loss
23 costs and premium collections. The commissioner may issue regu-
24 lations designed to further achievement by insurers of adequate
25 controls on loss costs and of adequate collection of the appro-
26 priate premium charges owed to the insurers.

27 (b) The commissioner of insurance shall promulgate reasonable
28 rules and statistical plans, which may be modified from time to
29 time and which shall be used thereafter by each insurer in the
30 recording and reporting of its loss and expense experience, in
31 order that the experience of all insurers may be made available at
32 least annually in such form and detail as may be necessary to aid
33 the commissioner in the performance of her duties. In promul-
34 gating such rules and plans, the commissioner shall give due con-
35 sideration to the rating systems on file with the division and, in
36 order that such rules and plans may be as uniform as is practicable
37 among the various states, to the rules and to the form of the plans
38 used for statistical reporting in other states. The commissioner
39 may designate one or more rating organizations or other agencies
40 to assist in gathering such experience and making compilations
41 thereof, and such compilations shall be made available, subject to
42 reasonable rules promulgated by the commissioner, to insurers
43 and rating organizations. Any such statistical agent appointed by
44 the commissioner pursuant to this section to assist in the gath-
45 ering, compilation and dissemination of statistical data shall be
46 authorized to assess reporting companies for the reasonable costs
47 of such services, as approved by the commissioner. In order to
48 further the uniform administration of rate regulatory laws, every
49 statistical agent and rating organization designated by the com-
50 missioner and every insurer that is not a member of any such
51 rating organization shall share the information and experience
52 necessary for the calculation of experience modifications and

53 other derivable elements from approved rating plans with every
54 other non-member insurer, approved statistical agent, and rating
55 organization requiring such information and experience in order to
56 estimate loss costs or LCMs for its own insureds or those of its
57 members or subscribers. Any statistical plan promulgated by the
58 commissioner pursuant to this section may include provisions for
59 reasonable fines or other penalties for late or inaccurate reporting,
60 and shall provide for a process by which insurers may appeal any
61 such penalties. Failure to cooperate with the commissioner's sta-
62 tistical agent or to pay any penalties levied pursuant to this section
63 may subject insurers to suspension, revocation, or other limitation
64 of the right to offer insurance in the commonwealth, subject to the
65 provisions of section 4 of chapter 175.

1 SECTION 10. Section 65 of Chapter 152 of the General Laws,
2 as appearing in the 2004 Official Edition, is hereby amended in
3 subsection (5), by adding at the end thereof the following:—

4 For purposes of making assessments pursuant to this section,
5 each company's standard premium shall be put at Pool level.
6 "Standard premium" as used in this section, and as it is used as a
7 basis for the equitable distribution of losses or other costs associ-
8 ated with the Assigned Risk Pool under section sixty-five C, shall be
9 as defined by the Massachusetts Workers' Compensation Statistical
10 Plan, approved by the Commissioner of Insurance; provided, how-
11 ever, that any such definition shall require that standard premium
12 shall be subsequent to the application of experience modification
13 and any credits applied under the Massachusetts Construction Credit
14 Program, but shall be prior to the application of any large deductible
15 credits or All Risk Rating Program charges.

1 SECTION 11. Section 65A of Chapter 152 of the General Laws,
2 as appearing in the 2004 Official Edition, is hereby amended by
3 striking out the first two sentences and inserting in place thereof
4 the following:—

5 Any employer whose application for voluntary workers' com-
6 pensation insurance is rejected or not accepted by at least two
7 company groups within five days may make application to the
8 duly appointed assigned risk pool administrator for admission to
9 the Pool. In order for such an employer to be eligible for such

10 admission, the employer shall have complied substantially with
11 this section, as well as with all laws, orders, rules and regulations
12 in force and effect relating to the welfare, health and safety of his
13 employees and shall not be in default of payment of any premium
14 for workers' compensation insurance. Upon receipt of a com-
15 pleted application accompanied by evidence of the company group
16 declinations of coverage referenced above from an employer other-
17 wise meeting the requirements of this section, said administrator
18 shall designate an insurer who shall forthwith, upon receipt of
19 payment for the premium therefor, issue to such employer a guar-
20 anteed cost policy of insurance at rates calculated in the manner
21 set forth in section 53A to provide all compensation required by
22 this chapter. Nothing in this chapter shall be construed to require
23 any employer written through the Pool to accept a voluntary offer
24 of coverage at a cost in excess of the cost of continued or renewed
25 residual market coverage or to require the Pool to non-renew any
26 Pool risk that has received a voluntary offer at premiums that are
27 either higher than those in the Pool or that require the payment of
28 premiums or loss-reimbursements that may be affected by losses
29 occurring during the same policy period for which coverage is
30 being offered. The commissioner may, however, consistent with
31 this section and in her sole discretion, order occasional mandatory
32 non-renewals of policies written through the Pool, require new
33 Pool applicants to provide affirmations or other evidence of their
34 inability to obtain voluntary market coverage, or undertake other
35 such depopulation initiatives deemed to be appropriate. To assist
36 both new businesses seeking coverage in the voluntary market and
37 currently insured employers seeking the lowest premiums avail-
38 able, the Division shall annually post on its website the percentage
39 differences between the Pool rates and the rates at which workers'
40 compensation is being sold pursuant to the most recently filed
41 individual company LCMs.

1 SECTION 12. In August of any year in which either the Hirsch-
2 Herfindahl Index of market concentration for the Massachusetts
3 workers' compensation market rose above 1,500 during the prior
4 year, or the Commissioner, for any other reasons, believes either
5 that competition may have been insufficient to protect consumer
6 interests or may have been conducted in a manner that was either

7 detrimental to a healthy competitive market or to quality workers'
8 compensation insurance products being widely offered in a non-
9 discriminatory manner at reasonable prices, she may hold a hearing
10 on the state of competition in the workers' compensation market.
11 If the primary reason for the commissioner's belief that the
12 workers' compensation market is insufficiently competitive is a
13 function of either (i) the residual market pool's contribution to the
14 Hirsch-Herfindahl Index of more than 30% or (ii) a significant
15 change in the residual market load borne by voluntary market car-
16 riers, the Commissioner may make an adjustment to the Pool
17 profit and contingency multiplier at the next loss cost proceeding
18 without holding a hearing on the state of competition in the
19 workers' compensation market. Decisions on any market competi-
20 tion hearing held pursuant to this section shall be issued no later
21 than September 15th of the year in which such hearing is held. If
22 the Commissioner finds, based on clear and convincing evidence
23 produced at such hearing, both that (i) competition as allowed by
24 this section has not sufficiently protected either broad consumer
25 or industry interests during the prior year, and (ii) administered
26 pricing would better serve such interests, she shall order the rating
27 bureau designated to file industry loss costs under this section to
28 instead file overall rates on behalf of the entire industry on each of
29 the next two filing dates. In such instances, all companies shall be
30 required to utilize only approved industry-wide rates during each
31 of the next two rate years. The hearings on such bureau rate fil-
32 ings shall be conducted within the same time frames as those set
33 forth in this chapter for prospective loss cost filings. After such
34 two-year period, prices shall again be determined through the use
35 of prospective loss cost filings and residual market and company
36 LCMs as set forth herein. Market competition hearings under this
37 section shall not be held during any year following the issuance of
38 an industry-wide rate approval.

1 SECTION 13. This act shall take effect sixty days after enact-
2 ment. Rates and classifications in effect prior to that date shall
3 remain in effect thereafter until new rates and classifications
4 become effective pursuant to the provisions of this act.